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OFFICE OF PETITIONS

In re Application of :
Smolinske, et al. : DECISION ON PETITION
Application No. 10/798,926 :
Filed: March 11, 2004 :
Docket No.: CE1125R :

This decision is in response to the petition under 37 CFR 1.181 filed September 13, 2006 to withdraw the holding of abandonment under 37 CFR 1.181.

This application was held abandoned for failure to timely submit a proper reply to the non-final Office action mailed November 14, 2005. The non-final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed June 13, 2006.

Petitioners assert non-receipt of the non-final Office action mailed November 14, 2005.

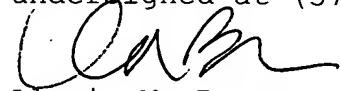
In the absence of any irregularity in the mailing of the Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

The arguments and supporting documentation presented have been carefully considered and support the conclusion that the non-final Office was not received.

In view thereof the Notice of Abandonment is hereby VACATED and the holding of abandonment is WITHDRAWN.

The application file is being forwarded to Technology Center 2600 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

A handwritten signature in black ink, appearing to read 'A. M. Brown', is written over the printed name.

Alesia M. Brown
Petitions Attorney
Office of Petitions